been established to compensate carriers buying interconnection and unbundled network elements in high cost areas. We support the Commission's proposal for transitional use of short-run marginal cost as an incentive to the LECs to conduct TSLRIC studies and to set rates on that basis. 66/ **[¶¶ 132, 133]**

VI. THE ACT REQUIRES UNIFORM TREATMENT OF TERMINATION UNDER THE INTERCONNECTION PROVISIONS OF SECTION 251(C)(2).

[Notice, Section II.B.2.e.(1), ¶¶ 159-165, 260, 262 (others?)].

A. The Act Has Transformed the Existing Access Charge Structure.

The 1996 Act has made obsolete the old ways of pricing usage of the local exchange network. Under the existing scheme, which the Act transforms, it was possible to distinguish between the completion of long distance calls (interexchange access) on the one hand, and completion of local calls (for example, between neighboring LECs) on the other. It also was possible to maintain a jurisdictional wall between interstate and intrastate services provided over the single LEC network. These distinctions were possible because of artificial regulatory fences that had been constructed between the local exchange -- which was a legal monopoly -- and interexchange markets.

66/ Proxy-based rates thus may be unnecessary. Certainly it is inappropriate to establish a range of acceptable rates. The Act requires TSLRIC based rates, and certainly does not contemplate giving LECs flexibility in pricing necessary inputs to competitors. **[¶¶ 134-143]**

Those fences were built over time, and later were embraced by the AT&T divestiture decree, which recognized the practical inability of regulators to prevent discrimination by the BOCs in favor of their own affiliated interexchange services. The fences made it possible to have robust competition in the interLATA market even though there was a monopoly over exchange access, because the provider of access -- an essential input to interLATA service -- was not also providing interLATA service itself. The decree also required interexchange access to be provided in a nondiscriminatory manner. Access charges that were set far above cost, and which bore no relationship to the price charged by ILECs to each other for terminating local calls, could be tolerated only because all carriers faced exactly the same input price in their respective walled off markets.

The current system of access charges, which are set well above economic cost and which are expressly designed to provide subsidies to other services, cannot survive in a world in which the RBOCs are themselves providing interLATA services. As we discuss below, these companies pay an effective price -- economic cost -- for originating and terminating long distance calls that is far below the price of access paid by their competitors. This inequity must be righted before the Bell companies can be permitted to provide competing interLATA services originating in their own service areas.

In our view, Congress expressly righted this inequity in the 1996 Act. It required incumbent LECs to provide interconnection to all carriers at cost-based rates and on a nondiscriminatory basis, in Section 251(c)(2). It also made this a prerequisite for BOC interLATA entry. 47 U.S.C. § 271(C)(2)(b)(i). The FCC must find, as a matter of statutory interpretation, that Sections 251(c)(2) and 252(d)(1) of the Act require interexchange access to be priced on the basis of economic cost (or TSLRIC). 67/

As discussed elsewhere, LDDS WorldCom recognizes that the Commission may face a transitional dilemma in moving to cost-based interconnection for all purposes. We realize that until the universal service proceeding is completed, a flash cut from existing carrier access to cost-based interconnection may be premature.

WorldCom's primary concern is that the long-term rules adopted here conform to the Act's clear mandates and goals. The Commission, however, has flexibility to deal with transitional issues for a limited time to meet a particular purpose. We propose that the Commission grant the ILECs a waiver that would permit them to continue to price interconnection used for interexchange access at current rate levels instead of at economic cost until completion of the universal service proceeding. Other Section 251 ILEC obligations, including the requirement that unbundled network elements be available at cost, would take effect immediately so that other carriers could begin to compete in the local market.

67/ As discussed above in connection with unbundling of network elements, access purchased as an unbundled network element or elements also must be priced at TSLRIC pursuant to Sections 251(c)(3) and 252(d)(1).

Since service over unbundled elements is likely to develop gradually, the transitional impacts should be small prior to resolution of universal service issues next spring.

The waiver should be voluntary. Any ILEC that is prepared to move to cost-based interconnection more rapidly is free to do so. Thus, for example, an RBOC that wants to meet its Section 271 checklist obligations before the universal service docket is completed can do so. Otherwise, it can wait and move to cost-based interconnection for interexchange access next year.

B. Access Is Interconnection Within the Meaning of Section 251(c)(2).

The 1996 Act requires interconnection and unbundled elements to be priced on the basis of cost, without reference to traditional rate of return pricing principles. 47 U.S.C. § 252(d)(1)(A)(1996). Because interexchange access is a form of interconnection within the meaning of Section 251(c)(2) of the 1996 Act, interexchange access must be priced at cost (or TSLRIC) under the Act.

Section 251(c)(2) provides an affirmative obligation on the part of the incumbent LEC to interconnect with any requesting telecommunications carrier "for the transmission and routing of telephone exchange and exchange access service." 47 U.S.C. § 251(c)(2) (1996). 68/ A "telecommunications carrier" is defined as any carrier offering telecommunications service (except aggregators). See 47 U.S.C.

68/ This obligation is broader than the general duty to interconnect imposed upon all telecommunications carriers under Section 251(a).

§ 153(a)(49). Therefore, interexchange carriers qualify as telecommunications carriers that are entitled to request interconnection. "Exchange access" is defined as the offering of access to telephone exchange services or facilities for the purpose of originating or terminating toll calls. See 47 U.S.C. § 3(a)(4). Section 251(c)(2)'s interconnection obligation therefore extends to interconnection between a telecommunications carrier's long distance network and an incumbent LEC's access network in order to originate and terminate toll calls. 69/

As the FCC recognized, interexchange carriers are "telecommunications carriers" that are providing "telecommunications services" within the meaning of Section 251(c)(2) of the Act. Notice at ¶ 159. The tentative conclusion reached in the Notice -- that Section 251(c)(2) does not encompass interexchange access -- is based on the view that the availability of interconnection in that section is limited to carriers offering local exchange or exchange access service, and is not available to carriers receiving exchange access. 70/ This distinction is nowhere to be found in Section 251(c)(2), however. Rather, the plain language entitles any carrier to obtain interconnection for the purpose of

---

69/ At least one state commission already has concluded that interexchange access is "interconnection" within the meaning of Section 251(c)(2). Southwestern Bell Telephone Company's Tariff Sheets Designed to Restructure Local Transport Rates, Missouri Public Service Commission Case No. TR-95-342, March 6, 1996, at 8.

70/ Notice at ¶. 161.

"transmission or routing of telephone exchange service or exchange access." 71/ Completion of interexchange calls falls squarely within this phrase.

A reading of Section 251(c)(2) that excludes interexchange access would be unsustainable, moreover, as a practical matter. As the Commission recognized in the Notice, local exchange facilities do not have a jurisdictional character. Notice at ¶¶ 120, 161. They are used in a virtually identical manner to terminate calls whether the calls originate across the street or across the country, and whether the calls originate on a wireless phone or a landline phone. Any artificial distinction is unsustainable. For example, the Act does not distinguish among types of requesting carriers access providers and access users, and carriers doing both, all qualify for cost-based interconnection. Access, in short, is interconnection -- and Section 251(c)(2) recognizes that such interconnection must be provided on a nondiscriminatory basis at cost-based rates.

There also is no bright line between "telephone exchange service" and "telephone toll service" under the Act -- yet the Commission proposes to determine how call completion should be priced based entirely on such distinctions. Section 3 of the Act, as modified by the 1996 Act, defines telephone exchange service as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange

---

71/ 47 U.S.C. § 251(c)(2)(A).

> service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

This definition knows no geographical or other logical boundaries. For example, a competitive carrier with a single switch serving an entire LATA could claim that its exchange area was LATA-wide under this definition. In the CMRS marketplace, those carriers that were unconstrained by interLATA equal access requirements have created service offerings that have no geographical boundaries at all. 72/ The Act's definition of "telephone toll service" also is not illuminating. Instead, it is merely circular:

> "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

Once the regulatory boundaries are removed, the distinction between exchange and interexchange service, and between local and toll, will be solely one of pricing. It is artificial and it will be unsustainable -- particularly once the BOCs are allowed to provide interLATA service. For new entrants, the toll/local distinction is nonexistent today. If the Commission bases its statutory interpretation of the applicability of Section 251(c)(2) on such distinctions, it will create an impossible situation that will force the FCC and the states to impose

72/ For example, the nonwireline cellular carrier in Florida offers state wide calling at a uniform price.

artificial constraints on the ability of new entrants to define their service areas and pricing plans in ways that are most competitive and innovative. Such rules of necessity also will penalize carriers that have different "local" footprints than incumbent LECs -- and by definition, this will include most new entrants. New entrants -- and the ILECs themselves -- will not necessarily adopt the same local/toll calling distinctions that the ILECs currently use. 73/ A narrow reading of Section 251(c)(2) also would embroil the FCC and the states in endless disputes over the determination of what constitutes "telephone exchange service" -- for which interconnection is priced at cost pursuant to Section 252(d)(2) -- versus "telephone toll service" -- for which interconnection is priced far above cost.

Interpreting Section 251(c)(2) to mean that interexchange access may be priced differently than local call termination also would create incorrect and uneconomic incentives for investment in telephone exchange facilities. As the FCC recognized, the purpose of the Act is "not to ensure that entry shall take place irrespective of costs, but to remove both the statutory and regulatory barriers and economic impediments that inefficiently retard entry, and to allow entry to take place where it can occur efficiently." 74/

73/ Disputes about the level of "local" versus "toll" calling also would be inevitable, requiring regulators to settle disputes and to take measures to prevent evasion of access charges.

74/ See Notice at ¶ 12 (emphasis added).

If "interconnection" is priced well below "access," service providers will be encouraged to choose network configurations and technologies that can circumvent access charges, even when those configurations or technologies are not economic or otherwise justifiable. For example, if the FCC considers call termination for CMRS providers to be "interconnection," priced on the basis of bill-and-keep or at economic cost, then CMRS technology will be artificially chosen over wired technologies. To avoid this, and to ensure nondiscriminatory treatment among all long distance services (regardless of the loop over which they originate) would require the FCC to draw a line around the "local" part of CMRS service, imposing access charges on other CMRS services. The difficulties of determining the toll/local boundary for wireline new local service providers would only be exacerbated for CMRS providers. **[¶¶ 166-169]**

A reading of the Act that requires pricing of interconnection -- including interexchange access -- at the ILEC's economic cost is also compelled by competitive policy reasons. Only by facing the same cost structure as the ILECs will new entrants be in a position to offer competitive services over ILEC network facilities. As the ILECs' own economists have admitted on many occasions, the input price for access for a ILEC is the incremental or economic cost of access, whereas for the ILEC's competitors, the input price is the access charge, which is far above the incremental cost of access. 75/ The FCC should not adopt a reading of the Act that would leave in place a discriminatory and anticompetitive system for interexchange access.

Finally, the entire structure and purpose of the Act compels a conclusion that interexchange access, like other forms of interconnection, must be priced on the basis of cost. The Act was designed to undo the 1984 divestiture decree. The premise of that decree was that the Bell operating companies had used their control over local exchange facilities to discriminate against unaffiliated long distance companies in both the pricing and provisioning of access to exchange facilities. This Act must be read to eliminate this discrimination as predicate to BOC entry into the interLATA business from within their local serving areas.

C. The Legislative History of the Act Supports the Conclusion that Access Is Not Excluded From Coverage Under Section 251.

Sections 251(g) and 251(i) of the Act do not support the FCC's proposed narrow reading of Section 251(c)(2), as some have argued. 76/ Section 251(g) was intended to preserve the current MFJ requirements for equal access and nondiscriminatory access charges until the FCC takes further action with regard to

---

75/ As discussed above in the section on pricing, the incumbent LEC "only pays itself the LRIC of access while the [LEC's competitor] must pay the price of access." Comments of BellSouth Telecommunications, Inc., in Louisiana PSC Docket No. U-20883, Testimony of Dr. William E. Taylor at 48, para. 99 (emphasis added).

76/ See Notice at ¶ 262.

those requirements and charges. To read into that Section an intention by Congress to fence off interexchange access from the application of the pro-competitive provisions of the Act is to read too much. Any such intention could have been -- and should have been -- expressly made. But that intention is not even implicit in the language of Section 251(g).

The legislative history of Section 251 is telling on this point. The Senate bill (S.652) contained a provision -- Section 251(k) -- that specifically limited the effect of the new interconnection requirements on interexchange access. Section 251(k) provided that "[n]othing in this section shall affect the Commission's interexchange-to-local-exchange access charge rules for local exchange carriers or interexchange carriers in effect on the date of enactment . . . ." S. 652, Sec.101, § 251(k). This provision did not survive the conference committee and was not included in the legislation that was passed by the full Congress and signed into law.

Section 251(i), which preserves existing FCC authority over interconnection under Section 201, also cannot be read to exclude interexchange access from the coverage of Section 251(c)(2). That section simply makes clear that the provisions of Section 251 governing interconnection do not deprive the FCC of its existing jurisdiction under Section 201. The Conference Report states that subsection 251(i) "makes clear the conferees' intent that the provisions of new section 251 are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under section 201 of the Communications Act." Conference Report at 123. Neither the plain language of Section 251(i) nor the conference make any reference to interexchange access. Section 201 governs far more than interconnection and applies far more broadly than simply to interexchange access. 77/ Had Congress intended to exclude interexchange access from the interconnection provisions of Section 251, it could have done so -- by including Section 251(k) of the Senate bill, which as noted above did explicitly limit the effect of the interconnection provisions on interexchange access. In short, neither the plain language of Section 252(i) nor the legislative history suggest that this Section devises to interexchange carriers the right to interconnection under Section 251(c)(2).

D. Section 251(c)(2) Is Not Limited to Mere Physical Interconnection.

Another interpretation of Section 251(c)(2) on which the FCC seeks comment is the idea that this Section covers only physical interconnection with the incumbent LEC network, and not the completion of calls on the LEC network. 78/ This reading of the Act is incorrect and gives the protections of the interconnection section of the Act far too narrow a reading. Under that reading, completion of calls

---

77/ See Notice at ¶ 114 (asking for comment on whether to use FCC's Section 201 authority to order unbundling of AIN elements, if such unbundling not already required by Section 251(c)(3)).

78/ Notice at ¶¶ 53-54, 232-34.

would be governed solely by the reciprocal compensation provision of Section 251(b)(5), which applies equally to all LECs, whether incumbents or new entrants. All the problems associated with distinguishing local from toll, discussed above, would then arise in connection with determining when and how the reciprocal compensation provisions apply.

The Commission also asks for comment on the relationship between Section 252(d)(2) (which addresses pricing of reciprocal compensation) and Section 252(d)(1) (which addresses pricing of interconnection). 79/ When read together, it becomes clear that the use of the word "interconnection" in Section 251(a) and in Section 251(c)(2) must include the obligation to provide call completion, since Section 251(b)(5) and 252(d)(2) only address pricing of such call completion. The pricing of such call completion, for both incumbents and new entrants, 80/ would be on the basis of "the additional costs of terminating such calls" as specified in Section 252(d)(2)(A)(ii). The incumbent LECs must also comply with the pricing standard for interconnection under Section 252(d)(1), because it is an incumbent LEC. Non-incumbent LECs need comply only with the pricing standard of Section 252(d)(2).

79/ Notice at paras. 53-54.

80/ The Act appears to apply the pricing standards of Section 252(d)(2) to both incumbent LECs and non-incumbent LECs to the extent that they are engaging in reciprocal compensation: "such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier" (emphasis added).

Thus, an incumbent LEC must provide interconnection with another LEC at cost-based rates (under Section 252(d)(1)) which reflect only the "additional costs" of termination and transport of calls. These two standards are consistent because, as discussed above in the pricing section, interconnection must be priced at incremental cost (TSLRIC). Prices that satisfy a TSLRIC standard also would not exceed the "additional costs" of providing transport and termination of calls to another LEC. 81/ And, as the FCC pointed out, the distinction between "termination and transport" of traffic and unbundled network elements will be impossible to draw in many (if not all) instances. See Notice at para. 233. This is yet one more reason why it is essential that pricing of all uses of LEC network be uniform and based on economic cost.

In sum, the correct reading of the term "interconnection" in Section 251(c)(2) is to encompass call completion as well as physical interconnection.

E. Access Must Be Priced at Cost For Other Reasons.

Even if the FCC were to conclude that Section 251(c)(2) does not encompass interexchange access, it still would be necessary to require interexchange access to be priced at cost. First, if interexchange access is not priced the same as local call termination -- and at economic cost -- interexchange access

81/ The bill-and-keep provisions of Section 252(d)(2)(B)(i) are fully consistent with these cost-based standards. That section merely allows state commissions to permit LECs to waive billing each other for exchanged traffic when that traffic is priced the same and is roughly in balance.

rates would violate the nondiscrimination provisions of Section 202(a) of the Act. Telecommunications service providers would pay different amounts for exactly the same thing -- call termination -- based solely on where the call originated. The ILECs' own input cost for interexchange access, moreover, is the economic cost of access. 82/ Thus, if an ILEC competitor pays the full access rate for the same function that is priced, to the ILEC, at economic cost, the result is unreasonably discriminatory under Section 202(a) of the Act. 83/ In addition, above-cost access pricing violates Section 254(d), which prohibits subsidies that are not express and nondiscriminatory.

The Commission asked for comment on whether there is a difference in the standard contained in Section 251(c)(2)(D) and that set forth in Section 202(a) of the Act. 84/ While the words "not unreasonably discriminatory" do not appear in Section 251(c)(2)(D), in our view, both standards prohibit non-cost-based price differences in rates for the same service or offering. 85/ Thus, unless access rates

82/ See discussion above.

83/ The FCC implicitly recognized this problem in the Notice at para. 146.

84/ Notice at para. 155-56.

85/ The FCC asks whether "density zone pricing or volume and term discounts" would be consistent with Section 251(c)(2)(D). In our view, such discounts are only justifiable when there are demonstrated to be based on actual cost differences. Volume discounts and zone density pricing is not necessarily cost-based. Many of these discounts that have been allowed to take effect at the FCC were never demonstrated to be justified by actual cost differences.

are set at the ILEC's economic cost, access rates will violate both Section 202(a) and Section 251(c)(2)(D)

Second, as the FCC recognized in the Notice, even if Section 251(c)(2) itself does not require access rate reform, such reform is essential if competition is to proceed. 86/ As discussed above, the LECs' own input cost for access is economic cost or TSLRIC. It will be impossible for the FCC to grant an RBOC application for in-region interLATA authority if access remains priced above economic cost. The Commission could not determine, under those circumstances, that the Section 271 public interest test had been satisfied. 47 U.S.C. § 271(d)(3)(C) (1996).

VII. SERVICE RESALE OBLIGATIONS OF INCUMBENT LECS [Notice at ¶¶172-88]

A. The Limited But Important Role of Service Resale.

Section 251(c)(4) establishes an alternative method for requesting carriers to provide local exchange service: resale of the retail offerings of the ILEC itself. As discussed above, this "service resale" alternative is fundamentally different from the interconnection option provided by Section 251(c)(3). See Section IV.A.4., supra. The latter permits a carrier to purchase some or all components of the ILEC network at cost, and design its own services to be marketed over those components. Those services may include local exchange, exchange access, toll, or

86/ Notice at ¶¶ 3, 146, 165.

ancillary services. In contrast, Section 251(c)(4) only provides a requesting carrier the ability to purchase and resell the ILEC-designed retail local service products. The reseller is bound by the product design of the ILEC. And importantly, the ILEC remains the provider of access to the resale end user.

These limitations on service resale are important. In particular, the Commission should recognize that until interconnection rates for origination and termination of toll calls are brought to cost (as discussed in the prior section of these comments), service resale works almost entirely in the favor of the ILEC. The ILECs claim that in the ordinary course retail local exchange service is priced approximately at or even below cost. That does not mean that the ILEC loses money serving the vast majority of customers, for it also receives revenues from other services to cover its costs. The result is that the (c)(4) service reseller is in the position of marketing the ILEC's loss leader (doing so under a pricing system that guarantees the ILEC's net revenues) while the ILEC continues to receive revenues from profitable services.

All that said, it remains the case that service resale will be an important entry vehicle in certain circumstances. Service resale at least provides a means for a requesting carrier to begin to develop a relationship with a customer that can be the foundation for evolution to other networking arrangements over time under subsection 251(c)(3). Service resale also will be important for those carriers who are not prepared to become local service providers themselves, but need to offer a local exchange product in a one stop shopping world.

B. The Commission Should Prohibit Resale Restrictions Beyond the Narrow Limitations Specified Expressly in the Act.

Section 251(c)(4)(A) establishes an absolute obligation on the part of the ILEC to make available for resale "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Similarly, subsection (c)(4)(B) states that the ILEC has a duty "not to prohibit, and not to impose conditions or limitations on, the resale of such telecommunications service." This language on its face answers the Commission's question regarding what limitations the ILEC can place on resale. With one specified exception -- intended to limit resale of subsidized services to the protected customer class 87/ -- there are none. **[¶ 175]**

Nothing in the Act creates any exception for LEC services offered on a discounted basis or for promotional purposes. No limitations means no limitations; any service means any service. The Act correctly recognizes that any such exceptions would swallow the rule. The LECs would leave a "standard" retail offering on the table, but compete in large measure through non-standard offerings. This result would completely defeat the pro-competitive purposes of Section 251(c)(4). **[¶ 175]**

87/ See 47 USC § 251(c)(4)(B).

Similarly, the Commission should not permit ILECs to evade the resale requirement through bundling. For example, Ameritech has filed resale tariffs in Illinois for CLASS features that do not permit a reseller to obtain wholesale rates for the ILEC's a multi-feature bundle. Ameritech then sets its retail rates for the bundled package at or below the wholesale rates for individual features. 88/ The Act is specifically intended to prevent such avoidance of the service resale requirement.

The Commission also should prohibit an ILEC from withdrawing a retail service from the market as a way to avoid resale, at least without a strong public interest showing. WorldCom recognizes that an ILEC may need to delete as well as add service from time to time for bona fide reasons. However, we also are aware that US West has attempted to withdraw Centrex services from the market that are valued by end users and particularly useful for resale purposes. Particularly during the initial implementation period for Section 251, the Commission should view service withdrawals skeptically and require a strong justification for them. [¶ 175]

The Act does allow this Commission to promulgate rules that would permit a state to limit resale of services offered by the ILEC to one category of subscribers. In that case the service reseller only could resell the service to the

---

88/ See Illinois Commerce Commission Docket No. 95-04458, Illinois Bell Telephone Co., Tariff Ill. C.C. No 20, Part 22 and Section 4.

same class of subscribers. LDDS WorldCom would not oppose the Commission creating such an exemption in two limited cases. First, Congress anticipated that some states may want to limit the resale of below-cost residential service to residential subscribers. Second, to the extent that ILECs establish special below-cost rates for schools, libraries and other non-profit institutions, it would similarly be acceptable to limit resale of those services to the same subscriber categories. In all other cases, however, service resale should proceed without regulatory limitations. [¶ 177]

Subject to the above, however, the Act does not allow states or ILECs to restrict the resale of telecommunications services that are offered at retail below the cost of providing the service. The approach established by Congress for the setting of wholesale rates -- retail rates excluding costs avoided -- ensures that ILECs are no worse off if they provide the below cost service directly or if the service is provided by resellers. Resellers do not gain an advantage because they will have to compete against the already below cost retail rates of the ILECs. Consumers with below cost local service, though, do gain an advantage -- a significant one. They will be able to have multiple carriers competing for their telecommunications business -- not just for their local service but for all their services. A general restriction on the resale of below cost retail offerings would virtually guarantee that only the ILEC could serve consumers of such services and would provide the ILEC with a substantial advantage with regard to other services -- interexchange service, cable service, cellular, etc. -- that the consumer may want to receive from a single provider. Such a result would deprive a portion of the market of the benefits of full competition and is not consistent with the 1996 Act.

C. The Commission Should Establish Rules to Guide Wholesale Pricing of Retail Services

Section 252(d)(3) specifies that wholesale rates for ILEC retail services should be set by taking the retail rates charged to subscribers and "excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by the local exchange carrier." 47 U.S.C. § 252(d)(3). LDDS WorldCom agrees that it is necessary for the Commission to establish principles to guide the interpretation of this requirement in the negotiation and arbitration process. Experience demonstrates that ILECs otherwise will argue that they need not give any material discount, and indeed, some even argue that it is more expensive to offer wholesale service than retail service. [¶ 179]

In determining wholesale rates, the FCC should require ILECs to exclude from retail rates the direct retail-related costs associated with those retail services as well as any other avoided costs. The FCC should specify the USOA accounts that reflect these costs. 89/ This is important, first, because these costs clearly are retail-related costs. Second, if the FCC does not specify the cost accounts that must be excluded in calculating wholesale rates, ILEC competitors will be forced to fight the ILECs in every state over what costs are considered retail-

---

89/ See filing of Telecommunications Carriers for Competition (TCC) for a fuller discussion of this point.

related. These disputes will substantially delay the availability of wholesale rates. The FCC should endeavor to create immediate competitive opportunities for local entry everywhere by establishing basic rules for setting wholesale rates.

The FCC also should require that ILECs exclude all retail-related costs from wholesale rates, not just those costs that the ILECs actually avoid as a result of implementing a carrier resale program. ILECs will undoubtedly point out that they are unable to avoid any significant costs, therefore making the wholesale rate very close to the retail rate. This approach would frustrate the Congressional purpose in creating a wholesale rate, which was to ensure that competitors would not have to reimburse the ILECs for retail costs that the competitors themselves would need to incur. If ILECs are successful in contending that they only must subtract the costs they can "manage" to avoid, wholesale rates are likely to be too high to permit entrants to compete, because those rates still will include substantial retail-related costs.

The FCC also should create a presumption that ILECs may not "add back" other costs onto wholesale rates. In establishing the methodology for calculating wholesale rates, Congress only specified exclusion from retail rates of costs associated with retail functions. It did not permit ILECs to recover any other costs in wholesale rates, including costs of provisioning service to competing carriers.

Finally, as noted above, the FCC should require ILECs to establish wholesale rates for all telecommunications services, including discounted and promotional offerings. The same discount should apply to all services provided by that ILEC, at least during the initial period following adoption of the FCC's rules.

The FCC asks for comment on the relevance of wholesale rates adopted in several state proceedings. Notice at para 183. Existing wholesale rates and discounts adopted by several states should not be used as a model. For the most part, they were adopted without regard to the statutory requirements of the 1996 Act. Any such rates would need to be revised to conform with the Act's pricing and other requirements. [183].

VIII. SECTION 251(i) REQUIRES THAT CARRIERS HAVE ACCESS TO THE RATES, TERMS AND CONDITIONS OF ANY AGREEMENT.

LDDS WorldCom agrees with the Commission's assessment that Section 252(i) is "a primary tool of the 1996 Act for preventing discrimination under Section 251."90/ The Commission should adopt standards for resolving disputes under Section 252(i) in the event that the Commission is required to assume a state commission's responsibilities under 252(e)(5). Section 252(i) requires that a local exchange carrier "shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in

---

90/ Notice, ¶269.

the agreement."**91**/ LDDS WorldCom believes that Congress intended this to mean that all interconnection, services, or network elements provided under an approved Section 252 agreement must be made available to any requesting telecommunications carrier -- not simply to any similarly situated carrier. This conclusion is supported by the very narrow language of Section 251 that requires rates for interconnection, unbundled elements and collocation to be "nondiscriminatory" and forbids the application of "discriminatory conditions" to service resale.**92**/

This is not to say that cost-based volume and term discounts are not permissible. Volume and term discounts that are justified on the basis of TSLRIC costs should be permitted. A carrier with smaller volumes or seeking a shorter term should not be precluded from requesting interconnection, service, or network elements under an agreement that has already been approved under 252. That carrier would simply receive a cost-based rate that reflects its smaller volume or reduced term. LDDS WorldCom agrees with the Commission that the Act precludes LECs from making interconnection, services or network elements available on the same terms and conditions only to parties serving the same class of customers or providing the same services as the original party.**93**/

91/ 47 U.S.C. 252(i).

92/ 47 U.S.C. 251(c)(2), (c)(3), (c)6), and (c)(4)(B).

93 Notice, ¶270.

LDDS WorldCom also believes that it was the intention of Congress that agreements approved under section 252 should be available to any requesting telecommunications carrier in whole or in part. One of the goals of Congress was to establish broad based competition in the local marketplace quickly. Congress adopted Section 252(i) to speed the process by making it unnecessary for each and every potential local competitor to negotiate with the ILEC. At the same time, Congress recognized that there would be a number of different potential competitors with a variety of strategies and resources for entering the local market, and that most of these potential competitors would have differing needs for interconnection, services, and unbundling. Congress did not intend that a requesting telecommunications carrier with a business plan that differed from the original party to the agreement would have to accept all the terms and conditions agreed to by the original party -- even those that were irrelevant to the requesting telecommunications carrier. [¶271]